IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 95 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

MANILAL TARACHAND

Appearance:

1. INCOME TAX REFERENCE No. 95 of 1988
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question for the opinion of this Court :-

"Whether, the Tribunal is right in setting aside the order made by the CIT u/s. 263 of the I.T. Act, 1961 ?"

2. The assessee is an individual. For assessment year 1973-74, the relevant accounting period is S.Y. 2028. The Income-tax Officer assessed the assessee under Section 143(3) read with 147(a) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). In the re-assessment order, the Income-tax Officer brought to tax long term capital gains in relation to the compensation (including solatium) received, in the land acquisition proceedings, which admittedly the assessee had not disclosed in his return of income for the year under consideration.

3. However, it is pertinent to note that the amount received by the assessee had been returned by the assessee in his return of income for assessment year 1975-76. In fact, the Income-tax Officer initiated re-assessment proceedings based on this disclosure made by the assessee for assessment year 1975-76.

4. The Commissioner of Income-tax, Rajkot initiated proceedings under Section 263 of the Act stating that the assessment order framed on 8.3.1985 under Section 143(3) read with Section 147 of the Act was erroneous and prejudicial to the interest of the revenue as the Income-tax Officer had failed to mention the point regarding initiation of penalty proceedings under Section 271(1)(c) of the Act on account of concealment of income or furnishing inaccurate particulars of income. The assessee resisted the notice for revision on two fold counts. Firstly, it was contended that the provisions of Section 263 did not empower the Commissioner of Income-tax to assume jurisdiction on account of failure to initiate penalty proceedings at the time of the assessment. Secondly, it was contended that in view of the facts and circumstances of the case, it could not be said that the assessee had concealed or furnished inaccurate particulars of income for which penalty proceedings could be initiated. The Commissioner of Income-tax did not accept the submissions made on behalf of the assessee and relying upon the decisions of the Madhya Pradesh High Court in the cases of Addl. CIT vs. Kantilal Jain, 125 ITR 375 and Addl. CIT (MP) vs. Indian Pharmaceuticals, 123 ITR 874 held that it was open to him to act under Section 263 of the Act when the Income-tax Officer had failed to initiate the penalty proceedings. The Commissioner of Income-tax also further held that the assessee had furnished inaccurate

particulars of income in so far as he had failed to disclose the fact of the property being notified for the purposes of acquisition and thus becoming entitled to compensation.

5. The assessee went in appeal before the Tribunal and the Tribunal relying upon the decisions in the cases of CIT vs. Narpat Singh Malkhan Singh, 128 ITR 77 (MP), Addl. CIT vs. J.K. D'Cost, 133 ITR 7 (Delhi) and CIT vs. Keshrimal Puranmal, 48 CTR (Raj.) 61 came to the conclusion that the Commissioner of Income-tax was not justified in exercising his revisionary jurisdiction under Section 263 of the Act. The Tribunal also took note of the fact that against the aforesaid decision of the Delhi High Court in case of J.K. D'Cost (Supra), the SLP filed by the Department had been dismissed by the Supreme Court in 147 ITR (Statute) 1.

6. Though on merits the arguments were raised before the Tribunal that even on facts the penalty was not leviable, the Tribunal has not recorded any decision because, according to the Tribunal, the controversy before it was of a limited nature and since it has nothing to do with the actual imposition of penalty under Section 217(1)(c) of the Act, it was not open to it to give any finding on merits of the matter.

7. We have heard Mr Akil Kureshi, learned counsel for the revenue and Mr RK Patel, learned counsel for the assessee.

8. In light of the facts as recorded by the Income-tax Officer in the assessment order, we feel that this is not a case where penalty could be imposed on the assessee on the charge of either concealment of income or furnishing inaccurate particulars of income. The dispute in the assessment, between the assessee and the department, was to the effect as to in which year the compensation received by the assessee was taxable. It appears that the assessee was under a belief that he would be liable to capital gains tax only on receipt of compensation and accordingly had shown the liability to capital gains tax in his return of income for assessment year 1975-76. Though for the purposes of re-assessment proceedings, the Income-tax Officer would be within his powers to initiate proceedings under Section 147 of the Act for assessment year 1973-74, it is not possible to hold that penalty under Section 271(1)(c) of the Act could be levied for the said assessment year.

9. In view of this fact situation, we feel that it

is not necessary to enter into the larger controversy regarding the jurisdiction of the Commissioner of Income-tax, namely, whether the Commissioner of Income-tax could act under Section 263 of the Act to direct the Income-tax Officer to initiate penalty proceedings under Section 271(1)(c) of the Act. On the facts stated hereinbefore, we hold that as no penalty was leviable on the assessee, the Commissioner of Income-tax could not have assumed jurisdiction under Section 263 of the Act. Therefore, the Tribunal's ultimate conclusion that the Commissioner of Income-tax's order under Section 263 of the Act could be set aside is right in law though for the reasons given by us. We do not express any opinion in relation to the reasons which weighed with the Tribunal. The question referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

10. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

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